IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7777 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALOD NAGAR PANCHAYAT (MUNICIPAL BOROUGH)

Versus

DEPUTY ENGINEER (O&M)

Appearance:

1. Special Civil Application No. 7777 of 1999

MR BC DAVE for Petitioner No. 1

MR AD OZA for Respondent No. 1

RULE SERVED for Respondent No. 2-3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the notice dated 30th September 1999 issued by the Gujarat Electricity Board for the

purpose of recovery of the amount due and payable by the petitioner Nagarpalika. It is the contention on behalf of the petitioner that the petitioner Nagarpalika is required to recover certain amount from the respondent No.1 Gujarat Electricity Board by way of octroi and therefore the impugned notice dated 30th September 1999 is bad in law unless and until the said amount is adjusted. The petitioner has tried to rely upon some communication between Deputy Executive Engineer of the Nagarpalika with regard to making payment of octroi and resolve the dispute.

2. It is an admitted position that the petitioner is a local body constituted under the provisions of the Gujarat Municipalities Act. It is also an admitted position that respondent No.1 Gujarat Electricity Board is an instrumentality of the State and a Government Undertaking. As per the judgment of the Hon'ble Supreme Court of India in the case of Oil & Natural Gas Commission Vs.Collector of Central Excise, reported in 1995 (Suppl.) (4) SCC 541. The dispute between two Public Sector Undertakings is first required to be considered by the High Powered Committee, and unless and until clearance is given by the High Powered Committee, petition is not maintainable between two Public Sector Undertakings. Considering the judgment of the Hon'ble Supreme Court in the case of Oil & Natural Gas Commission (supra), even recently the Hon'ble Supreme Court in the case of Mahanagar Telephone Nigam Ltd Vs. Chairman, Central Board of Direct Taxes & Another, reported in (2004) 6 SCC 431, has reinterated the same principle as under;

"8. Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to government departments and/or public sector undertakings. As is stated in Chief Conservator of Forests case it was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in coordination and not confrontation. The mechanism set up by this Court is not, as

> suggested by Mr. Andhyarujina, only to conciliate between the government departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High-Powered Committee. If it can, the High-Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High-Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High-Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the department/public sector undertaking finds the decision unpalatable, discipline required that they abide by it"...

3. In that view of the matter, the petition itself is not maintainable. The petitioner is, therefore, relegated to approach the Chief Secretary to the Government, State of Gujarat, who is the head of the High Powered Committee, within the period of 21 days from today pointing out the grievances voiced in the present petition. The Chief Secretary is directed to consider representation, if any, made and take an appropriate decision thereon within the period of three months from the date of such representation after affording opportunity of hearing to the petitioner as well as the respondent No.1 Gujarat Electricity Board in light of the decisions of the Hon'ble Supreme Court in the aforesaid cases to resolve the dispute. In event if the dispute is not resolved, then the question with regard to grant of permission to the petitioner to litigate or not may be considered.

4. Under the circumstances, the present Special

Civil Application is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith. It is, however, hoped that till the High Powered Committee takes an appropriate decision, the respondent No.1 Board may not take any coercive action.

5. It goes without saying that this Court has not expressed anything on the merits of the petition and the petition is dismissed considering the judgments of the Hon'ble Supreme Court in the aforesaid cases in light of the principle laid down therein that a dispute between two Public Sector Undertakings is first required to be considered by the High-Powered Committee.

[M.R. Shah, J.]

rmr.